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84-1276

Office-Supreme Court, U.S.
FILED
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ALEXANDER L. STEVAS,
CLERK

No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM , 1984

ROBERT K GRACE , Petitioner

VS.

BILLS AUTO REPAIR AND TOWING ,
Respondant

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

ROBERT K GRACE
Petitioner - Pro Se

P.O. BOX 25005
ST. LOUIS MO 63125

STATEMENT OF QUESTIONS

1) AN INSTITUTION THAT HAS BEEN GIVEN CHARTER POWERS TO BE A "BODY POLITIC AND CORPORATE" IS A GOVERNMENTAL SUBDIVISION OF THE STATE OF MISSOURI. THE STATUTES OF MISSOURI" LIST SUCH INSTITUTIONS WITHIN ITS GOVERNMENT STRUCTURE.

2) THE ACTIONS OF THE INSTITUTION THAT IS GOVERNMENT SUBDIVISION AND ITS AGENTS ISSUES TO BE A FEDERAL QUESTION 28 U.S.C. sec. 1331

LIST OF THE PARTIES

The parties are as they appear on the cover.

* The respondant is an agent of the institution involved in the Questions of this petition. The institutions name is the Washington University.

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75 US , 8 Wall ,499, 19 LEd 498 ---11

STATEMENT OF JURISDICTION

The united States Court of Appeals for the Eighth Circuit entered judgement in the Appeal on December 18,1984

A timely petition for a rehearing was filed and the Court of Appeals denied the petition on January 8,1985

The Statutory provision believed to confer on this Courts jurisdiction to review the above stated judgement by Writ of Certiorari is 28 U.S.C. sec 1254 (1)

LAWS THAT THE CASE INVOLVES

(Verbatum Text- Appendix)

14th Amendment,U.S. Constitution, Due Process Clause

42 U.S.C. sec 1983 ,Deprivation of rights under color of law,custom,etc

28 U.S.C. sec 1331, Federal Question Jurisdiction

Revised Statutes of Missouri, Chapters 610 and 352

STATEMENT OF CASE

The case involves the actions of an individual who towed and is keeping the petitioners car at the request of a police department.

The case was filed in Federal Court seeking Federal relief from violations of petitioners Constitutional Rights , especially those Rights that guaranty protection of a persons life ,liberty, and property from arbitrary government actions. The case draws in question the 14th Amend. of the U.S. Constitution,(Due Process Clause) and the U.S. Statute 42 U.S.C. sec 1983, which affords relief from deprivation of Federal Rights done under color of State Law Custom, or Usage. During the course of proceedings injunctive relief was asked.

The District Court for the Eastern District of Missouri dismissed the case for lack of Federal Question Jurisdiction, 28 U.S.C. sec 1331, by holding that :

1.) the institution that engages and utilizes the Police Department is a private institution, and 2.) the individual that towed and is keeping the petitioners auto pursuant to the Police request is a private citizen, and 3.) neither the institution or the citizen- is of a State agency.

The cause was Appealed to the U.S. Court of Appeals for the Eighth Circuit to achieve Federal Question Jurisdiction.

The Appeal centered around the issue that the institution that engages the Police Department is what is commonly called a Municipal Corparation. Under Missouri Law it is called a Quasi-Public Governmental Body, which is entitled to be referred to as a Public Governmental Body. This being as the institution was' given Charter Powers to be a Body Politic and Corporate.

The U.S Court of Appeals affirmed without opinion , and mandated the District

Courts decision. But in doing so, the Court of Appeals departed from the usual and accepted course of judicial proceedings , and its judgement is contrary to applicable decisions of this Court.

ARGUMENT

The case is being denied Federal Question Jurisdiction ,28 U.S.C. sec1331 on the basis that it does not involve the actions of a State Governmental Body. . Federal Question jurisdiction does exist because: 1) The institution involved is a part of the State of Missouri's Government Structure, and 2) The citizen whose business actions are in issue,of towing cars is an agent of the institution that is Governmental in nature.

The institution involved was constituted to be by Charter, granted by state Legislature, a 'Body Politic and Corporate'. The State of Missouri's Statute Law outlines the various institutions that are Bodys Politic and Corporate, which are Quasi-Public and Public Governmental Bodys. SEE- Revised Statutes of Missouri Chapters 610 and 352 in Appendix.

These Statutes referred to above,that define the various Quasi-Public and Public

ARGUMENT

Governmental Bodies were presented to the U.S. Court of Appeals in the form of a Request for Judicial Notice of Adjudicative Facts. The Request was filed pursuant to Federal Rule of Evidence 201.

According to FRE 201 the Court of Appeals is required to take Notice of the facts that were being Requested. However ,the Court of Appeals neglected to take Judicial Notice of the Statutes of the State prior to entering its judgement. The Court of Appeals also neglectdd to take Judicial Notice of the Statutes prior to issueing Mandate.

This neglect is a departure from the usual and accepted course of Judicial proceedings. Without taking Judicial Notice of the facts being Requested, the Court of Appeals judgement fails short of the entire matter in question: That the

institution who had petitioners car towed and detained is not a private institution,but rather it is a Body that is Governmental and is more or less a political subdivision of the State.

The Court of Appeals judgement which was mandated is contrary to decisions and rulings by this Court.

In Munn V Illinois ,94 US 113,124 24 LEd 77 , this Court defined a 'Body Politic and Corporate' as " a social compact by which the whole people covenants with each citizen , and each citizen with the whole people ,that all shall be governed by laws for the common good."

This above stated situation exists with the institution here involved. As the State Statutes already pointed out before contain the elements necessary before a Body can be a Quasi-Public Governmental Body. The Elements are ;That the institution

must perform a public function and, it must be performed pursuant with an agreement with a Public Governmental Body.

This Court has recognized the public function and its agreement with the State that the institution here involved carries out. SEE- Washington University V Rouse , 75 Us , 8 Wall,439, 19 LEd 498

The Court of Appeals judgement was also contrary to a early case in another Circuit. In the case of U.S. V Maurice Circuit Court D Vir, 26 F Cas No 15,747 , 2 Brock 96 the Court said 'The United States is a government and consequently, a 'Body Politic and Corporate'.

For further illustration and to emphasize why this Court needs to reveiw and decide the Question, one Federal Court expressly gave Federal Question Jurisdiction to sue a 'Body Politic" for the purposes of the 14th Amendment and ,42 U.S.C. sec 1983 and 28 U.S.C. sec 1343(a)3 SEE- Parker V Board of

Education of Prince Georges County ,
237 F Supp 222

This Court needs to reveiw this case in which the U.S. Court of Appeals has failed to recognize that the institution with a Police Department is a Governmental body. It is not merely a State-related institution as it is Statutorily a Governmental Bodyof the State.

In as much that the institution is a Governmental Body ,the following principles laid down by this Court are applicable to the citizen who towed away and is keeping petitioners car at the request of Police of the institution. In United States V Price 383 US 787 , 86 SCt 1152,1157 this Court said private citizens who are willfull participants in a joint activity with the State, become State agents and bring entire transaction under color of State Law ,custom,or Usage.

Said in another way, this Court held 'There is a sufficiently close nexus between the State and the challenged action of the person so that the latter may fairly be treated as that of the State itself. Jackson V Metropolitan Edison , 419 US 345, 351, 95 SCt 449 ,453, 42 LEd 2nd 477

These principles have been adopted in actions like this one where garage owners towed and kept cars at the request of Police officers. SEE - Stypmann et el V City and County of San Francisco 557 F2nd 1338 ; and Tedeche V Blackwood 410 F Supp 34.

It is clear , with the guidance from this Courts established rules and principles , as well as with other Circuit and Federal Courts declarations , that Federal Question Jurisdiction does exist in this case. The Eighth Circuits departure from proceedure by not takeing Judicial Notice of the Laws that creates the institution to be Governmental certainly restricted its judgement

over the matter.

The Question ,whether the institution that is a Body Politic and Corporate and that has its own Police Department is a Governmental Body of the State needs to be settled by this Court. Surely the Public interest and wellfare is derivative from the matter. The importance of the question would seem collateral with the importance of the 14th Amendments due process clause and the Statute 42 U.S.C. sec 1983.

Petitioner request this Supreme Court to reveiw the matter below by Writ of Certiorari.

Respectfully Submitted

ROBERT K CRACE
petitioner

P.O. Box 25005
St Louis Mo 63125

over the matter.

APPENDIX

UNITED STATES COURT OF APPEALS
for the Eighth Circuit

No 84-2016-EM	)	SEPTEMBER TERM 1984
	)	
ROBERT K GRACE	)	
	)	Appeal from the U.S.Distrct
Vs	)	Court- Eastern District of
	)	Missouri
BILLS TOWING	)	

Appellants petition for rehearing has been considered by this Court and is hereby denied.

January 8,1985

UNITED STATES COURT OF APPEALS
for the Eighth Circuit

No 84-2016-EM	)	SEPTEMBER TERM 1984
	)	
ROBERT K GRACE	)	
	)	Appeal from U.S.District
Vs	)	Court-Eastern District of
	)	Missouri
BILLS TOWING	)	

Appellants application for a preliminary injunction or other relief is DENIED.

The Court has also carefully reviewed the original file of the U.S. District Court for the Eastern District of Missouri in its case No 84-0320-C3 and it is hereby ordered that the judgement of the District Court Dismissing the complaint for lack of jurisdiction be AFFIRMED. See 8th Cir R 14

December 18,1984

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ROBERT K GRACE	)	
	)	
V	)	NO 84-0320-C3
	)	
BILLS TOWING	)	

ORDER

Pursuant to 28 U.S.C. 636(b) all pending pretrial matters were referred to U.S. Magistrate Robert D Kingsland for his recomendation. On June 29,1984 the Magistrate filed his review, to which plaintiff has filed his responses. After careful consideration of the entire record,

IT IS HEREBY ORDERED that the reveiw and recomendation of the United States Magistrate be and the same is sustained ,adopted,and incorporated herein.

It IS HEREBY FURTHER ORDERED that this action be and the same is dismissed for lack of jurisdiction 28 US.C. sec 1331

DATED 27th day of July 1984

William L Hungate
U.S. District Judge.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

ROBERT K GRACE	)	
	)	
V	)	No 84-0320-C3
	)	
BILLS TOWING	)	

ROBERT K GRACE	)	
	)	
V	)	No 83-2602-A3-
	)	
HEARTLAND TRANS INC	)	

MAGISTRATES REVIEW AND RECOMMENDATION

The above-styled matters were referred to the undersigned U.S. Magistrate for review and recommended disposition on all pending pretrial matters 23 U.S.C. sec 636(b)

Plaintiffs first complaint alleging that defendant Bills Auto Repair and Towing violated his fourth amendment right against unreasonable search and seizure should be dismissed for lack of Federal Jurisdiction. 28 U.S.C. sec 1331. The record reveals that the defendant towed plaintiffs car from the Washington University parking lot and is

holding it pending plaintiffs payment of a towing fee. Washington University is a private institution ,and Bills Towing is a privately-owned business.

The plaintiff erroneously labled his cause of action as a federal question. The defendant is not an agent of the State or federal government , nor is there evidence to suggest that defendant was directed by a public agency or official to 'Seize" plaintiffs car. The law is well settled that a seardh or seizure by a private citizen,without instruction or direction of a federal agency does not fall within the protection of the Fourth amendment. Colliage V New Hampshire 403 US 443,487; Burdeau V Mcdowell 256 US 465 This is a private cause of action and is entirely within the jurisdiction of the State Courts.

Accordingly,it is the recommendation of the undersigned U.S. Magistrate that plaintidfs complaint against Bills Towing Should be dismissed for lack of jurisdicti on 28 U.S.C sec 1331

Robert D Kingsland
U.S. Magistrate

Dated this day of June 29,1984

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42 U.S.C. sec 1983

Every person who under color of any Statute,ordinance,regulation,custom or usage, of any State or Territory or the District of Columbia,subjects or causes to be subjected ,any citizen of the United States or any person within the jurisdiction thereof, to the deprivation of rights, privelages or immunities secured by the Constitution and Laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress.

28 U.S.C. sec 1331

The district courts shall have original jurisdiction of all civil actions arising under the Constitution ,Laws or treaties of the United States.

Robert D Kingsland
U.S. Magistrate

Dated this day of June 29,1934

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42 U.S.C. sec 1983

Every person who under color of any
statute,ordinance,regulation,custom or
usage, of any State or Territory or the
District of Columbia subjects or causes to
be subjected, any citizen of the United States
or any person within the jurisdiction
thereof to the deprivation of rights,
privileges or immunities secured by the
Constitution and laws, shall be liable to
the party injured in an action at law, suit
in equity or other proper proceeding for redress

28 U.S.C. sec 1331

The district courts shall have original
jurisdiction of all civil actions arising
under the Constitution, laws or treaties
of the United States.

REVISED STATUTES OF MISSOURI, CHAPTER 610 *

(Governmental Bodies and Records)

* Section 610.010 Definitions

(2) "Public Governmental Body" , any constitutional or statutory governmental entity , including any State body, agency, board ,bureau, commission,committee,department division or any political subdivision of the State ,of any county or municipal government, school district or special purpose district, any other governmental deliberative body under the direction of three or more elected or appointed members having rulemakeing or quasi-judicial power, any committee appointed under the direction or authority of any of the above named entities and which is authorized to report to any of the above named entities, and any quasi-public governmental body.

The term " Quasi-Public Governmental Body" means any corporation organized or authorized to do business in this State under the provisions of Capters 352,353 or 355 of these

Revised statutes of Missouri,which performs a public function and which has as its primary purpose to enter into contracts with public governmental bodies ,or engage in activities carried out pursuant to an agreement or agreements with public governmental bodies.

REVISED STATUTES OF MISSOURI,CHAPTER 352 *

* Section 352.010 Any number of persons not less than three who shall have associated themselves by articles of agreement in writing as a society,company,association or organization formed for benevolant,religious , scientific,fraternal beneficial or educational purposes may be consolidated and united into a corporation.

* Section 352.020 Any association formed for benevolant purposes ,including any purly charitable society,hospital,asylem,house of refuge, reformatory and eleemosynary institution, or any association whose object is to promote temperance or virtue conducive

to the well-being of the community , and generally , any association formed to provide for some good in the order of benevolance , that is useful to the public ,may become a body politic and corporate under this chapter * * * any school ,college ,institute academy or other association formed for educational or scientific purposes,* * * may be created to be a body politicand corporate

* Section 352.060 The secretary of state shall issue to the petitioners a certified copy of such articles of agreement , with the several certificates thereon as filed in his office which certified copy shall be the charter, and their upon the petitioners , their associates and successors shall be created and be a body politic and corporate, and such charter together with this chapter shall be received in all courts and places as legal evidence of the incorporation.

CHARTER OF ELIOT SEMINARY (later became Wahington University)

Laws of Missouri 1852-53 page 209

Para. 1. Christopher Rhodes , Samual Treat, John M Krum, John Cavinder, Gearge Pegrum, N.J. Eaton, James Smith, Seth A Ranlett, Mann Butler, William G Eliot , John How , Hudson e Bridge , William Glascow, Samuel Russel and Wayman Crow, and their associates and successors are hereby constituted a body politic and corporate, by the name of "the Eliot Seminary," and by that name shall have perpetual succesion,and be capable of taking and holding by gift,grant devise or otherwise conveying ,leasing,or otherwise diposing of any estate,real,personal, or mixed ,annuities,endowments ,franchises, and any other heredíments which may conduce to the support of said seminary,or to the promotion of its objects ; all property of

said corporation shall be exempt from taxation, and the sixth, seventh and eighth sections of the first article of the act concerning corporations of March 19,1845 shall not apply to this corporation.

CARTER OF WASHINGTON UNIVERSITY

Laws of MIssouri 1856 - 57 page 610

Para. 1. The name of the corporation now known as the Eliot Seminary shall henceforth be "the Washington University" ,by which name the said corporation shall have, hold and enjoy all property, rights and franchises, endowments, immunities and priveleges confered upon and belonging to the Eliot Seminary.

CERTIFICATE OF SERVICE

I Robert K Grace served three copies of this Petition for Writ of Certiorari on the Respondants Attorney in compliance with Supreme Court Rule 28 paragraphs 1,2, 3 and 5. Service was made on Mr Lawrence O. Willbrand at his office address , 915 Olive Street , Suit 1006, St Louis Mo 63101 , by personal service this day of February 5, 1985

ROBERT K GRACE

Robert K Grace

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